IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Date of decision: 01.12.2006

Writ Petition No. 847 of 2005 (S/S)

1. Km. Bhagwati Negi
   D/o Sri Diwan Singh Negi
   Assistant Teacher, Science
   Raja Mahendra Pratap Girls Junior High School
   Gurukul Narsen, Haridwar
   Permanent R/o House No. 1-D
   Ashok Nagar, Roorkee, District Haridwar.
2. Smt. Roma Devi
   D/o Sri Iqbal Singh
   Assistant Teacher, Hindi
   Raja Mahendra Pratap Girls Junior High School
   Gurukul Narsen, Tehsil Roorkee
   District Haridwar. …….Petitioners

Versus

1. State of Uttaranchal
   through Secretary Education, Dehradun.
2. Director of Education, State of Uttaranchal
   Dehradun.
3. Additional Education Officer
   (Basic Shiksha Adhikari)
   Haridwar.
4. Raja Mahendra Pratap Girls
   Junior High School
   Gurukul Narsen, Haridwar
   Through Administrator.
5. Head Mistress
   Raja Mahendra Pratap Girls
   Junior High School, Gurukul Narsen
   Haridwar. ……Respondents.

Shri S.N. Babulkar, Sr. Advocate, assisted by Sri Vijay Bhatt, learned counsel for the petitioners.
Shri N.P. Sah, learned standing counsel for respondents No. 1 to 3.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date 01.12.2006

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Hon'ble Prafulla C. Pant, J

By means of this petition, moved under Article 226 of Constitution of India, the petitioner has sought writ in the nature of mandamus, directing respondent No. 3 to grant approval to the selection of the petitioners as Assistant

Teachers in Raja Mahendra Pratap Girls Junior High School, Gurukul Narsen, Haridwar (herein after referred as the School). Also, a mandamus has been sought directing the respondents to pay salary of the petitioners, who are working as Assistant Teachers.

2. Heard learned counsel for the parties.

3. Brief facts to the case, as narrated in the writ petition, are that petitioners are working as Assistant Teachers in the School. The School is recognized institution, which is governed by the provisions of U.P. Basic Education Act, 1972, and the rules framed there under. The School came under grant in aid of the Government in the month of May, 2005. According to the petitioners, vide order dated 19.05.2003 (Annexure-3 to the writ petition), Regional Joint Assistant Education Director (Basic), Garhwal region, three more sections were permitted to be opened in the school (one each for Class VI, VII and VIII). Consequently, Management of the school, issued an advertisement on 05.03.2004 (copy Annexure-4 to the writ petition) for the appointment of teachers. Petitioners were the candidates, who appeared in the interview in pursuance of said advertisement and got selected by the Selection Committee on 12.03.2004. Appointment letters (Annexure-6 to the writ petition), were issued to the petitioners and they joined their duties in the school. Since then they are teaching in the school. Meanwhile, the resolution dated 12.03.2004 of the Committee of Management was sent along with the required documents to respondent No. 3 (District Basic Education Officer, Haridwar) for approval of the

appointments of the petitioners. It is alleged by the petitioner that the respondent No. 3 neither gave approval nor rejected the same. Hence this petition.

4. In the counter affidavit, filed on behalf of the respondents No. 2 and 3, it is admitted that school is a recognized one. It is also admitted that the petitioners were appointed by the Management of the school. However, it is stated in the counter affidavit that vide order dated 19.06.1998 (copy Annexure C.A. -1 to the counter affidavit) that there were only four posts sanctioned for the post of Assistant Teachers. It is further stated on behalf of the respondents that appointment of the petitioners was not approved by the District Basic Shiksha Adhikari and they are working under internal arrangement of the Management of the school. It is further stated that no prior approval of District Basic Education Officer was obtained before making appointments of the petitioners. As to the approval sought by the Management for the petitioners, it is stated that District Basic Education Officer sent back the record to the school with the remark that the procedure adopted by the Manager is doubtful. However, in para-I, before parawise reply, the respondents have admitted that three more posts were sanctioned by the Regional Assistant Education Director (Basic), vide his order dated 01.03.2005. Alleging that the appointment of the petitioners were not in accordance with the rules, it is stated that before advertisement dated 05.03.2004, for appointment as Assistant Teachers, no prior approval was sought by the District Basic Education Officer.

5. Before further discussions, it is pertinent to mention here the relevant provisions of law applicable to the case. Rule 3 of U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Condition of Services of Teachers) Rules, 1978, (herein after referred as Rules) reads as under:-

"3. Appointment.- *(1) It shall be the responsibility of the Management to fill a vacancy in the post of Headmaster or assistant teacher as the case may be, of a recognized school by 31st July every year.*

(2) If any vacancy occurs during an academic session, it shall be filled within two months from the date of occurrence of such vacancy."

Rule 9 of the Rules, provides as under:-

"9. Selection Committee- *For appointment of Headmaster and Assistant Teacher in the institutions other than minority institutions and in the minority institution, the Management shall constitute a Selection Committee as follows-*

A- Institution other than Minority Institutions:-

(i) For post of Headmaster:

(1) Manager;

(2) A nominee of District Basic Education Officer.

(3) A nominee of the Management;

(ii) For the post of Assistant Teacher:

(1) Manager;

(2) Headmaster of the recognized School in Which the appointment is to be made;

(3) A nominee of the Management.

……."

Relevant portion of Rule 10 of the aforesaid Rules is being reproduced below:-

*"**10. Procedure for Selection.-** (1) The Selection Committee shall after interviewing such candidates as appear before it on a date to be fixed by it in this behalf. of which due intimation shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.*

(2) The list prepare under clause (1), shall also contain particulars regarding the date of birth, academic qualification and teaching experience of the candidates and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall, as soon as possible, forward such list, together with the minutes of the proceedings of the Committee to the management.

(4) The Manager shall within one week from the date of receipt of the papers under clause (3) send a copy of the list to the District Basic Education Officer.

(5) (i) If the District Basic Education Officer is satisfied that-

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post;

(b) the procedure laid down in the rules for the selection of Headmaster or assistant teacher, as the case may be, has been followed he shall accord approval to the recommendations made by the Selection Committee and shall communicate his

decision to the management within two weeks from the date of receipt of the papers under clause (4).

(ii) *if the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the management with the direction that the matter shall be reconsidered by the Selection Committee.*

(iii) *If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4). he shall be deemed to have accorded approval to the recommendations made by the Selection Committee."*

6. Annexure-3 to the writ petition, clearly shows that vide order dated 19.05.2003, three more sections were permitted to be opened in the school by Regional Education Assistant Director (Basic), Garhwal region. The said fact is not denied by the respondents in their counter affidavit. It is also not disputed that the school was given grant in aid vide Government Order No. 751/XX/B-2/2005, dated 24.05.2005. That being so, under Section 10 of U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978 (U.P. Act No. 6 of 1979), the State Government is liable to make payment of salary of teachers and employees of institution, which has come under grant in aid.

7. In view of the Clause (iii) of sub-rule (10) of the Rules, quoted above, there appears to be a deemed approval of the petitioners, who were appointed by the Management

of the school after following selection procedure in aforesaid Rule 10. Annexure-7 to the writ petition is copy of the proceedings of interview conducted by the Selection Committee, which is not only signed by the Principal and Manager of the school but also by Sudha Thapliyal, Assistant Basic Education Officer. Narsen, a nominee of the District Basic Education Officer. The said document clearly shows that the petitioners were duly selected. A letter dated 12.03.2004 (Annexure-9 to the writ petition) further discloses that the record was sent to the District Basic Education Officer for his approval. It was the duty of the District Basic Education Officer either to approve or to disapprove the same within one month, failing which under Clause (3) of sub-rule (5) of Rule 10 of the Rules, quoted above, a deemed approval stands accorded.

8. Learned Standing Counsel argued that no prior approval was taken from District Basic Education Officer before making advertisement, but he failed to show any rule, which requires prior approval before making an advertisement for a post. Learned Standing Counsel, further contended that the District Education Officer had sent back the record sent by the school and as such the approval was refused. However, he failed to show any letter, communicating disapproval of the District Basic Education Officer, made to the school. It is also submitted on behalf of respondents No. 1 to 3 that the appointments were made in accordance with rules. I fail to understand to what rule the respondents No. 1 to 3 are referring to, particularly when their own nominee is signatory to the interview chart (Annexure-7 to the writ petition). Lastly, it

is contended on behalf of respondents No. 1 to 3 that the Government is not responsible to make payment of salary beyond the sanction strength of the Teachers. In this connection, my attention was drawn to C.A. 1 to the counter affidavit, which is copy of letter dated 19.06.1998, whereby strength of teachers has been shown to be four. But that by itself does not deprive the petitioners from their entitlement to the salary for the reason that Annexure-3 to the writ petition shows that (after the year 1998) in the year 2003, three more posts stood sanctioned after the school was allowed to run three more sections. Of course, in said letter dated 19.05.2003, the Regional Assistant Education Director (Basic), has put a condition that the Government would not be responsible for making payment of salary in respect of the newly added sections. The said condition does not help the respondents after 2005 when the school was brought under grant in aid for the reason that the condition mentioned in Government Order cannot override rather gets superceded by the provisions of Section 10 of U.P. Junior High Schools (Payment of Salary of Teachers and Other Employees) Act, 1978.

8. In the above circumstances and for the reasons as discussed above, this writ petition deserves to be allowed. The writ petition is allowed with the observation that there is deemed approval of the petitioners appointment under Clause (3) of sub-rule (5) of rule 10 of U.P. Recognised Basic School (Junior High Schools) (Recruitment and Conditions of Services of Teacher) Rules, 1978. Accordingly, mandamus is issued against the respondents to make the payment of salary of the petitioners w.e.f.

academic year 2005-06, the date when the school was brought under grant in aid. Prior to said date, the liability to pay salary to the petitioners would be that of the Management of the school.

Dt. 01.12.2006 **(Prafulla C. Pant, J.)**

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